

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 7418

IN THE MATTER OF:

Served September 24, 2003

Application of MARYLAND EXPRESS )  
TRANSPORTATION INC. for a )  
Certificate of Authority -- )  
Irregular Route Operations )

Case No. AP-2003-84

MARYLAND EXPRESS TRANSPORTATION )  
INC., Investigation of )  
Unauthorized Operations )

Case No. MP-2003-47

Maryland Express Transportation Inc., (respondent or applicant), has applied for a certificate of authority and is under investigation to determine whether it violated Article XI, Section 6(a), of the Compact.

The two proceedings are being consolidated because the question of whether respondent/applicant violated the Compact is relevant to a determination of whether it is fit to receive a certificate of authority.

**I. THE INVESTIGATION**

Article XI, Section 6(a), of the Compact provides that a person may not engage in transportation subject to the Compact unless there is in force a certificate of authority issued by the Commission authorizing the person to engage in that transportation. Article XI, Section 1, of the Compact states that the Compact applies to transportation of passengers for hire between points in the Metropolitan District, which includes but is not limited to Montgomery County, Maryland, and Ronald Reagan National and Washington-Dulles International Airports.

On August 12, 2002, a member of the Commission's staff observed one of respondent's vans advertising service between Montgomery County, on the one hand, and the aforementioned airports, on the other. Commission staff wrote to respondent on August 16, 2002, advising it to cease operations in the Metropolitan District and to consider filing an application for WMATC operating authority by September 3, 2002. Respondent timely requested a thirty-day extension and filed an application on October 3, 2002. The application was rejected on October 15, 2002. The rejection letter explained the reasons the application was not acceptable. Seven months went by with no further filing from respondent. In the meantime, members of the Commission's staff observed respondent's vans operating in the Metropolitan District.

The initial order in this investigation directed respondent to produce any and all records in its possession, custody or control relating to operations in the Metropolitan District during the period beginning September 3, 2002, and ending May 21, 2003. In response,

respondent produced reservation records from January 2003 to May 2003, which respondent's president avers are all of the reservation records it has. Respondent's president explains that he did not follow-up with a corrected application because of health problems apparently stemming from a traffic accident in late October 2002. Out of the thirty-six trips represented in the records produced by respondent, only three were within the Commission's jurisdiction. All three occurred March 28, 2003.

A person who knowingly and willfully violates a provision of the Compact, or a rule, regulation, requirement, or order issued under it, or a term or condition of a certificate shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation.<sup>1</sup> Each day of the violation constitutes a separate violation.<sup>2</sup> The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.<sup>3</sup> The term "willfully" does not mean with evil purpose or criminal intent but purposely or obstinately, with intentional disregard or plain indifference.<sup>4</sup>

Respondent was on notice of our jurisdiction no later than October 3, 2002, when it filed an application for WMATC authority. Therefore, we find the three violations in 2003 to be knowing and willful. We will assess a civil forfeiture against respondent in the amount of \$250<sup>5</sup>.

## II. THE APPLICATION

Applicant seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District, restricted to transportation in vehicles with a seating capacity of less than 16 persons only, including the driver. The application is unopposed.

The Compact, Title II, Article XI, Section 7(a), authorizes the Commission to issue a certificate of authority if it finds that the proposed transportation is consistent with the public interest and that the applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission.

Applicant proposes commencing operations with three vans. Applicant's proposed tariff contains per capita fares for transportation to and from Ronald Reagan Washington National and Washington-Dulles International Airports.

Applicant verifies that: (1) applicant owns or leases, or has the means to acquire through ownership or lease, one or more motor vehicles meeting the Commission's safety requirements and suitable for the transportation proposed in this application; (2) applicant owns,

<sup>1</sup> Compact, tit. II, art. XIII, § 6(f).

<sup>2</sup> Compact, tit. II, art. XIII, § 6(f)(ii).

<sup>3</sup> In re Charles B. Mainor, t/a Mainor's Bus Serv., No. MP-98-69, Order No. 5575 (Apr. 7, 1999)

<sup>4</sup> Id.

<sup>5</sup> See id. (assessing \$250 per day).

or has the means to acquire, a motor vehicle liability insurance policy that provides the minimum amount of coverage required by Commission regulations; and (3) applicant has access to, is familiar with and will comply with the Compact, the Commission's rules, regulations and orders, and Federal Motor Carrier Safety Regulations as they pertain to transportation of passengers for hire. Normally, such evidence would establish applicant's fitness,<sup>6</sup> but in this case applicant has a history of regulatory violations.

When an applicant has a record of violations, the Commission considers the following factors in assessing the likelihood of future compliance: (1) the nature and extent of the violations, (2) any mitigating circumstances, (3) whether the violations were flagrant and persistent, (4) whether applicant has made sincere efforts to correct its past mistakes, and (5) whether applicant has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.<sup>7</sup>

Operating without authority is a serious violation, and we find no mitigating circumstances. On the other hand, we cannot characterize applicant's conduct as flagrant and persistent. Payment of the forfeiture assessed herein will serve to correct applicant's past mistakes.<sup>8</sup>

We have approved the applications of certain wayward carriers in the past subject to the condition -- imposed under Article XI, Section 7(d), of the Compact -- that they serve a period of probation as a means of ensuring prospective compliance.<sup>9</sup> We believe that probation would be appropriate here, as well, given the circumstances.

Based on the evidence in this record, and in consideration of the terms of probation prescribed herein, the Commission finds that the proposed transportation is consistent with the public interest and that applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission.

THEREFORE, IT IS ORDERED:

1. That Cases Nos. MP-2003-47 and AP-2003-84 are hereby consolidated.

2. That the Commission hereby assesses a civil forfeiture against Maryland Express Transportation Inc. in the amount of \$250 for knowingly and willfully violating Article XI, Section 6(a), of the Compact

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<sup>6</sup> In re Quiana Tours, Inc. & William E. Gillison, t/a Quiana Tours, No. AP-02-140, Order No. 7316 (July 17, 2003).

<sup>7</sup> Order No. 5575.

<sup>8</sup> Id.

<sup>9</sup> E.g., In re Shirlington Limo. & Transp., Inc., No. AP-02-20, Order No. 6709 (June 21, 2002) (one year); In re Adventures By Dawn L.L.C., No. AP-00-89, Order No. 6087 (Jan. 16, 2001) (same).

3. That Maryland Express Transportation Inc. is hereby directed to pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashier's check, the sum of two hundred fifty dollars (\$250).

4. That upon applicant's timely compliance with the requirements of this order, Certificate of Authority No. 844 shall be issued to Maryland Express Transportation Inc., 13201 Astoria Hill Court, #D, Germantown, MD 20874.

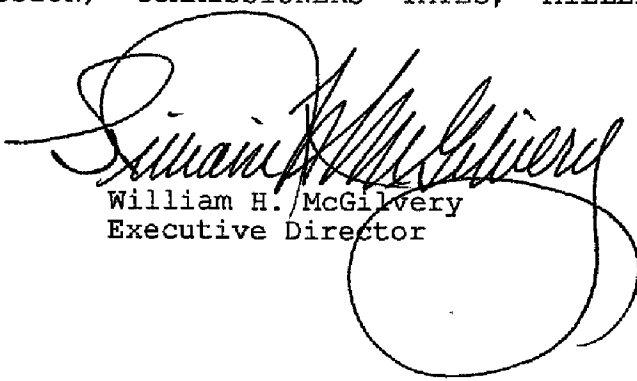
5. That applicant may not transport passengers for hire between points in the Metropolitan District pursuant to this order unless and until a certificate of authority has been issued in accordance with the preceding paragraph.

6. That applicant is hereby directed to file the following documents within thirty days: (a) evidence of insurance pursuant to Commission Regulation No. 58 and Order No. 4203; (b) an original and four copies of a tariff or tariffs in accordance with Commission Regulation No. 55; (c) a vehicle list stating the year, make, model, serial number, fleet number, license plate number (with jurisdiction) and seating capacity of each vehicle to be used in revenue operations; (d) a copy of the for-hire vehicle registration card, and a lease as required by Commission Regulation No. 62 if applicant is not the registered owner, for each vehicle to be used in revenue operations; (e) proof of current safety inspection of said vehicle(s) by or on behalf of the United States Department of Transportation, the State of Maryland, the District of Columbia, or the Commonwealth of Virginia; and (f) a notarized affidavit of identification of vehicles pursuant to Commission Regulation No. 61.

7. That applicant shall be placed on probation for a period of one year commencing with the issuance of the certificate of authority authorized by this order, such that a willful violation of the Compact, or of the Commission's rules, regulations or orders thereunder, by applicant during the period of probation shall constitute grounds for immediate suspension and/or revocation of applicant's operating authority without further proceedings, regardless of the nature and severity of the violation.

8. That the grant of authority herein shall be void and the application shall stand denied upon applicant's failure to timely comply with the requirements of this order.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES, MILLER AND MCDONALD:



William H. McGilvery  
Executive Director